

BILL TEXT:

STATE OF NEW YORK

S. 2708

A. 5542

2005-2006 Regular Sessions

SENATE - ASSEMBLY

February 24, 2005

IN SENATE -- Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. McLAUGHLIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, the correction law, the state finance law, the vehicle and traffic law, the judiciary law, the civil practice law and rules, the executive law, the environmental conservation law and the public authorities law, in relation to enacting the comprehensive auto theft prevention act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known, and may be cited as the "compre-
2 hensive auto theft prevention act".

3 § 2. Legislative findings. The legislature declares that a motor vehi-
4 cle theft crisis of pandemic proportions exists in the state. The theft
5 and vandalism of motor vehicles has been allowed to continue unchecked.
6 The legislature finds that the criminal justice system's inability to
7 enforce the current laws protecting vehicles and motorists breeds cyni-
8 cism and contempt for the legal system.

9 Based upon these findings, it is the legislature's intent to ensure
10 that the motor vehicle theft epidemic in this state is comprehensively
11 addressed by the criminal justice system.

12 The legislature declares that without new statutory and financial
13 resources to combat motor vehicle theft, the problem will not be
14 substantively ameliorated.

15 It is the policy of this state that the investigation, prosecution and
16 incarceration of those responsible for motor vehicle theft and related
17 crimes shall be a priority for the criminal justice system.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 § 3. Section 10.00 of the penal law is amended by adding two new
2 subdivisions 20 and 21 to read as follows:

3 20. The term "motor vehicle" shall mean all vehicles as defined by
4 section one hundred twenty-five of the vehicle and traffic law.

5 21. The term "motor vehicle theft" shall mean all violations of arti-
6 cle one hundred fifty-five or one hundred sixty-five of this chapter
7 which involve the theft of a motor vehicle or the parts thereof or the
8 possession or use of a stolen vehicle or parts thereof.

9 § 4. The penal law is amended by adding a new section 60.15 to read as
10 follows:

11 § 60.15 Authorized disposition; persistent motor vehicle theft offen-
12 ders.

13 When the court has determined, pursuant to the applicable provisions
14 of law, that a person is a persistent motor vehicle theft offender, the
15 court, in lieu of imposing a sentence authorized by article sixty-five,
16 eighty or eighty-five of this chapter, must impose the sentence of
17 imprisonment provided for a class C felony.

18 § 5. Subdivision 1 of section 70.15 of the penal law, as amended by
19 chapter 291 of the laws of 1993, is amended to read as follows:

20 1. Class A misdemeanor. A sentence of imprisonment for a class A
21 misdemeanor shall be a definite sentence. When such a sentence is
22 imposed the term shall be fixed by the court, and shall not exceed one
23 year; provided, however, that a sentence of imprisonment imposed upon a
24 conviction of criminal possession of a weapon in the fourth degree as
25 defined in subdivision one of section 265.01 must be for a period of no
26 less than one year when the conviction was the result of a plea of guilty
27 entered in satisfaction of an indictment or any count thereof charg-
28 ing the defendant with the class D violent felony offense of criminal
29 possession of a weapon in the third degree as defined in subdivision
30 four of section 265.02 and provided further that for a first or second
31 conviction of any violation of article one hundred fifty-five or one
32 hundred sixty-five of this chapter, a sentence of no less than one year
33 of imprisonment must be imposed when the conviction was the result of a
34 plea of guilty entered in satisfaction of an indictment or any count
35 thereof charging the defendant with motor vehicle theft as defined in
36 section 10.00 of this chapter, except that the court may impose any
37 other sentence authorized by law upon a person who has not been previ-
38 ously convicted in the five years immediately preceding the commission
39 of the offense for a felony or a class A misdemeanor defined in this
40 chapter, if the court having regard to the nature and circumstances of
41 the crime and to the history and character of the defendant, finds on
42 the record that such sentence would be unduly harsh and that the alter-
43 native sentence would be consistent with public safety and does not
44 deprecate the seriousness of the crime.

45 § 6. The penal law is amended by adding a new section 70.17 to read as
46 follows:

47 § 70.17 Sentence of imprisonment for persistent motor vehicle theft
48 offenders.

49 1. A persistent motor vehicle theft offender is a person who is
50 convicted of a violation of article one hundred fifty-five of this chap-
51 ter after having two previous convictions for motor vehicle theft.

52 2. For the purposes of this section, a prior conviction for motor
53 vehicle theft shall only include convictions for violation of sections
54 155.23, 155.25, 155.30, 155.35, 155.42, 165.05, 165.06, 165.08, 165.09,
55 165.10, 165.40, 165.45, 165.50, 165.52, or 165.54 of this chapter, or,
56 in another jurisdiction, of an offense having elements similar to that

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1 described in section 155.30, 155.35, 155.42, 165.05, 165.06, 165.08,
2 165.09, 165.10, 165.40, 165.45, 165.50, 165.52, or 165.54 of this chap-
3 ter, for which a sentence of a term of imprisonment is authorized by
4 statute, when the offense involved the theft of a motor vehicle or parts
5 thereof, or possession of a stolen motor vehicle or part thereof.
6 Sentencing for such prior convictions must have been imposed before the
7 commission of the present offense. A suspended sentence, suspended
8 execution of a sentence, a fine, probation, conditional or unconditional
9 discharge, and a sentence of certification to the care and custody of a
10 drug abuse control commission, shall be deemed a sentence for the
11 purpose of this section.

12 § 7. The penal law is amended by adding a new section 155.23 to read
13 as follows:

14 § 155.23 Grand larceny auto.

15 A person is guilty of grand larceny auto when he unlawfully possesses
16 a stolen motor vehicle within forty-eight hours of the theft of such
17 vehicle or within forty-eight hours of the time when such theft is
18 reported to the police, whichever is later.

19 Grand larceny auto is a class D felony.

20 § 8. Section 165.65 of the penal law is amended by adding a new subdivi-
21 sion 3 to read as follows:

22 3. All licensed vehicle dismantlers, salvage pools, mobile car crush-
23 ers, itinerant vehicle collectors, and others who are in the business of
24 buying and selling motor vehicles or parts thereof who possess stolen
25 motor vehicles or parts thereof are presumed to know that such property
26 was stolen if it was obtained without it being ascertained by an inquiry
27 prescribed in section four hundred fifteen-a of the vehicle and traffic
28 law that the person it was obtained from had a legal right to possess
29 it.

30 § 9. Section 220.10 of the criminal procedure law is amended by adding
31 a new subdivision 7 to read as follows:

32 7. Notwithstanding any of the foregoing, before the court may consent
33 to any plea for a lesser offense pursuant to subdivision three of this
34 section for an indictment which charges the defendant with a crime meet-
35 ing the definition of motor vehicle theft under section 10.00 of the
36 penal law, the court must state for the record how the interests of
37 justice are served by such plea to a lesser offense. The court may not
38 consider any perceived lack of prison space, fiscal constraint, or the
39 number of cases pending before the court when stating such benefits.

40 § 10. Section 410.10 of the criminal procedure law is amended by
41 adding a new subdivision 4 to read as follows:

42 4. When a court pronounces a sentence of probation or of conditional
43 discharge for a defendant convicted of motor vehicle theft as defined in
44 subdivision twenty-one of section 10.00 of the penal law, other than a
45 persistent motor vehicle theft offender as defined in section 70.17 of
46 the penal law, it must also specify as part of the sentence the interest
47 of justice that is served by such sentence other than incarceration.
48 The court shall not consider any perceived lack of prison space or
49 fiscal constraints when stating such benefits.

50 § 11. Section 70 of the correction law is amended by adding a new
51 subdivision 9 to read as follows:

52 9. The commissioner is authorized to acquire from the commissioner of
53 mental health any and all hospitals, as defined in subdivision ten of
54 section 1.03 of the mental hygiene law, that are no longer needed by the
55 office of mental health. The commissioner is authorized to convert these
56 hospitals as necessary for use as correctional facilities as defined in

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1 paragraph (a) of subdivision one of this section. The commissioner shall
2 report to the governor, the temporary president of the senate and the
3 speaker of the assembly, no later than the first of January next
4 succeeding the date when this subdivision shall take effect, on the
5 department's progress in acquiring and converting these hospitals into
6 correctional facilities as defined in paragraph (a) of subdivision one
7 of this section.

8 § 12. The correction law is amended by adding a new section 615 to
9 read as follows:

10 § 615. Reports on expanding jail capacity. Every sheriff, or in coun-
11 ties within the city of New York, the commissioner of correction of such
12 city, shall report no later than the first of January of each year to
13 the governor, the temporary president of the senate, the speaker of the
14 assembly, the chief executive officer of such county or city, and the
15 legislative body of such county or city, on opportunities to expand jail
16 capacity within such jurisdiction.

17 § 13. Section 855 of the correction law is amended by adding a new
18 subdivision 10 to read as follows:

19 10. Notwithstanding any of the foregoing, no otherwise eligible inmate
20 who is under sentence for motor vehicle theft as defined in section
21 10.00 of the penal law shall be released until he has served at least
22 one-half of his minimum term of imprisonment.

23 § 14. Subdivision 2 of section 91 of the state finance law, as amended
24 by chapter 55 of the laws of 1992, is amended to read as follows:

25 2. Such account shall consist of all fees received pursuant to article
26 five, sections three hundred ninety-four, three hundred ninety-eight-c,
27 four hundred fifteen, [~~four hundred fifteen-a,~~] four hundred twenty-
28 nine, subdivision four of section five hundred thirty and subdivision
29 seven of section one thousand one hundred ninety-six of the vehicle and
30 traffic law and all reinstatement, suspension, termination and reappli-
31 cation fees received pursuant to article nineteen of the vehicle and
32 traffic law and required to be deposited to this account, and all other
33 monies credited or transferred thereto from any other fund or source
34 pursuant to law.

35 § 15. The state finance law is amended by adding a new section 90-b to
36 read as follows:

37 § 90-b. Motor vehicle investigation fund. 1. There is hereby estab-
38 lished in the joint custody of the state comptroller and the commission-
39 er of taxation and finance a special revenue fund to be known as the
40 motor vehicle investigation fund.

41 2. Such fund shall consist of all revenues received by the state
42 pursuant to section four hundred fifteen-a of the vehicle and traffic
43 law and all other monies credited or transferred thereto from any other
44 fund or source pursuant to law.

45 3. Monies of the motor vehicle investigation fund, following appropri-
46 ation by the legislature and allocation by the director of the budget
47 shall be made available to the department of motor vehicles for the
48 costs associated with enforcement of section four hundred fifteen-a of
49 the vehicle and traffic law.

50 § 16. The state finance law is amended by adding a new section 97-eeee
51 to read as follows:

52 § 97-eeee. Combat auto theft fund. 1. There is hereby established in
53 the joint custody of the state comptroller and the commissioner of taxa-
54 tion and finance a special fund to be known as the combat auto theft
55 fund.

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1 2. Such fund shall consist of all revenues received by the state
2 pursuant to article four hundred ninety-five of the penal law and all
3 other grants, bequests or other moneys credited, appropriated or trans-
4 ferred thereto from any other fund or source.

5 3. Moneys of the combat auto theft fund, following appropriation by
6 the legislature and allocation by the director of the budget, shall be
7 made available for the following purposes:

8 a. for funding and programmatic assistance to any non-profit organiza-
9 tion certified by the chairperson of the crime victims board under the
10 provisions of the omnibus auto theft consumer protection act.

11 b. for the expenses of the "auto theft reward" program established
12 under the omnibus auto theft consumer protection act.

13 c. for grants to enable local police agencies to increase the number
14 of investigators assigned to motor vehicle theft crimes, as defined in
15 section 10.00 of the penal law.

16 d. for the expenses of any special terms of the supreme court which
17 may be established pursuant to article five-C of the judiciary law.

18 e. for the appointment of assistant district attorneys and other staff
19 pursuant to article five-C of the judiciary law.

20 f. for grants to enable district attorneys in counties not wholly
21 contained within a city having a population of one million or more to
22 increase the number of assistant district attorneys assigned to prose-
23 cute motor vehicle theft crimes, as defined in section 10.00 of the
24 penal law.

25 g. for grants to enable local police agencies and district attorneys
26 to purchase equipment needed for the investigation and prosecution of
27 motor vehicle theft crimes, as defined in section 10.00 of the penal
28 law.

29 4. Moneys shall be paid out of the fund on the audit and warrant of
30 the state comptroller on vouchers certified or approved by the chair-
31 person of the crime victims board; provided, however, that before the
32 chairperson may execute any voucher, he must certify that any grants
33 containing moneys from the combat auto theft fund pursuant to paragraph
34 c, d or e of subdivision three of this section, shall be used to expand
35 or establish motor vehicle theft prevention programs, rather than to
36 fund existing programs. The chairperson shall award all grants contain-
37 ing moneys from the combat motor vehicle theft fund pursuant to para-
38 graphs c, d and e of subdivision three of this section to localities in
39 accordance with the incidence of motor vehicle theft within their juris-
40 isdiction.

41 § 17. The vehicle and traffic law is amended by adding a new section
42 161 to read as follows:

43 § 161. Tow truck. Every vehicle that is equipped with a crane, winch,
44 tow bar, push plate, or other device designed to pull or push a vehicle
45 or raise a vehicle or the front or rear ends thereof.

46 § 18. The vehicle and traffic law is amended by adding a new section
47 223-a to read as follows:

48 § 223-a. Routine check of registration. 1. The superintendent of state
49 police, in consultation with the commissioner, is authorized to promul-
50 gate regulations to ensure that local authorities, as defined in section
51 one hundred twenty-two of this chapter, establish programs to routinely
52 and regularly check the ownership of motor vehicles as defined in subdi-
53 vision two of this section for the purpose of detecting and recovering
54 stolen motor vehicles.

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1 2. For the purposes of this section, local authorities shall be
2 authorized to check the ownership of all vehicles during the times spec-
3 ified in section two hundred twenty-three of this article which either:

4 (a) are participating in the combat auto theft program established in
5 section two hundred twenty-three of this article; or

6 (b) show physical evidence of having been stolen or vandalized.

7 § 19. Subdivision 3 of section 415-a of the vehicle and traffic law,
8 as amended by chapter 309 of the laws of 1996, is amended to read as
9 follows:

10 3. Fees. The annual fee for registration as a vehicle dismantler,
11 salvage pool, mobile car crusher or itinerant vehicle collector shall be
12 [~~fifty~~] five hundred dollars. Upon approval of an application, an appro-
13 priate registration shall be issued for a period of time determined by
14 the commissioner and if issued for a period of more or less than one
15 year, the fee shall be prorated on a monthly basis. Fees assessed under
16 this section shall be paid to the commissioner for deposit to the
17 [~~general fund~~] motor vehicle investigation fund established pursuant to
18 section ninety-b of the state finance law.

19 § 20. Paragraph (a) of subdivision 5 of section 415-a of the vehicle
20 and traffic law, as amended by chapter 161 of the laws of 1996, is
21 amended to read as follows:

22 (a) Any records required by this section shall apply only to vehicles
23 or parts of vehicles for which a certificate of title has been issued by
24 the commissioner or which would be eligible to have such a certificate
25 of title issued. Every person required to be registered pursuant to
26 this section shall maintain a record of all motor vehicles, trailers,
27 and major component parts thereof[~~7~~] and any potentially hazardous
28 wastes as defined in section 27-0303 of the environmental conservation
29 law coming into his possession together with a record of the disposition
30 of any such motor vehicle, trailer or part thereof and shall maintain
31 proof of ownership for any motor vehicle, trailer or major component
32 part thereof while in his possession. For the purposes of this article
33 an inflatable restraint system shall be a major component part. Such
34 records shall be maintained in a manner and form prescribed by the
35 commissioner. [~~The commissioner may, by regulation, exempt vehicles or~~
36 ~~major component parts of vehicles from all or a portion of the record~~
37 ~~keeping requirements based upon the age of the vehicle if the commis-~~
38 ~~sioner deems that such record keeping requirements would not further the~~
39 ~~purposes of the motor vehicle theft prevention program established by~~
40 ~~section two hundred twenty three of this chapter] Upon receipt of a
41 motor vehicle, all dealers licensed under subdivision four of this
42 section must make an inquiry to the New York state police information
43 network as to whether the person from which the vehicle was obtained had
44 a legal right to possess it. The inquiry must also be conducted when a
45 licensee receives any motor vehicle part with a retail value in excess
46 of two hundred fifty dollars, and the location and/or disposal of the
47 remainder of the vehicle must be accounted for and registered in the
48 record as well. Acceptance of a vehicle or part thereof with a retail
49 value in excess of two hundred fifty dollars without conducting such an
50 inquiry, or the entry of a false confirmation of an individual's right
51 to possess said vehicles or parts, or failure to maintain such confirma-
52 tion shall, for the purposes of this section, be considered failure to
53 conduct an inquiry. Failure to conduct such an inquiry shall result in
54 the immediate revocation of the license. Upon request of an [~~agent of~~
55 ~~the commissioner or of any police officer~~] investigator of the depart-
56 ment, a sworn officer of the water supply police employed by the city of~~

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1 New York, a sworn officer of the division of law enforcement in the
2 department of environmental conservation, or officers and members of the
3 sanitation police of the department of sanitation of the city of New
4 York duly appointed as peace officers by such department, and during his
5 regular and usual business hours, and not less than twice nor more than
6 twelve times during a calendar year, a vehicle dismantler shall produce
7 such records and permit said [~~agent or police officer~~] investigator or
8 officer to examine them and any vehicles or parts of vehicles which are
9 subject to the record keeping requirements of this section and which are
10 on the premises. Upon request of any [~~agent of the commissioner~~] investi-
11 gator of the department, a sworn officer of the water supply police
12 employed by the city of New York, a sworn officer of the division of
13 law enforcement in the department of environmental conservation, or
14 officers and members of the sanitation police of the department of sani-
15 tation of the city of New York duly appointed as peace officers by such
16 department, and during his regular and usual business hours, and not
17 less than twice nor more than twelve times during a calendar year, a
18 salvage pool, mobile car crusher or itinerant vehicle collector shall
19 produce such records and permit said [~~agent or police officer~~] investi-
20 gator or officer to examine them and any vehicles or parts of vehicles
21 which are subject to the record keeping requirements of this section and
22 which are on the premises. Before the commissioner shall issue any
23 permit to a vehicle dismantler, salvage pool, mobile car crusher, or
24 itinerant vehicle collector, the licensee shall sign a statement of
25 informed consent, promulgated by the commissioner, authorizing investi-
26 gators of the department or any of the sworn officers enumerated in this
27 section to conduct administrative searches, without a warrant, to
28 enforce the provisions of this section. If, during this inspection, it
29 is discovered that the licensee failed to keep accurate records as
30 prescribed by the commissioner, or if he failed to make an inquiry as to
31 the proper prior ownership of the vehicle or parts thereof, then the
32 license shall be immediately revoked by the investigator or officer.
33 For the purposes of this section, any investigator or sworn officer is
34 authorized to examine any records maintained in accordance with this
35 section and any vehicle or part on the premises to verify the veracity
36 of the records. For the purposes of enforcing section 27-0309 of the
37 environmental conservation law, any such investigator or officer shall
38 also have access to any other written records maintained by the licen-
39 see. Any violation of law discovered by an investigator or officer
40 during an administrative inspection conducted pursuant to this section
41 shall be promptly reported to a police officer who must obtain a search
42 warrant pursuant to article six hundred ninety of the criminal procedure
43 law before any search may proceed. The failure to produce such records
44 or to permit such inspection on the part of any person required to be
45 registered pursuant to this section as required by this paragraph shall
46 be a class A misdemeanor.

47 § 21. Section 424 of the vehicle and traffic law is amended by adding
48 a new subdivision 3 to read as follows:

49 3. Any police officer, state trooper, or peace officer, acting pursu-
50 ant to his special duties shall have the power to detain, for the
51 purposes of determining proper ownership of the vehicle being towed, any
52 tow truck as defined in section one hundred sixty-one of this chapter.

53 § 22. The judiciary law is amended by adding a new article 5-C to read
54 as follows:

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ARTICLE 5-C

SPECIAL MOTOR VEHICLE THEFT PARTS OF THE SUPREME COURT INCITIES WITH A POPULATION OF ONE MILLION OR MORESection 178-a. Special motor vehicle theft parts; establishment.178-b. Special motor vehicle theft parts; prosecutorial organization.178-c. Special motor vehicle theft parts; procedure.178-d. Special motor vehicle theft parts; probation services.

§ 178-a. Special motor vehicle theft parts; establishment. 1. There shall be established in cities having a population of one million or more in the supreme court, special motor vehicle theft parts in such numbers and at such locations as shall be designated by the administrative board of the judicial conference of the state of New York to effectuate the purposes of this article. Such parts shall hear and determine motor vehicle theft indictments assigned thereto from any part of the supreme court in any county within such cities.

As used in this article, "motor vehicle theft indictment" means an indictment charging a crime that is prosecutable in any county wholly contained within cities having a population of one million or more involving motor vehicle theft as defined in section 10.00 of the penal law or any other offense properly joined therewith.

2. Notwithstanding any other provision of law, upon or after arraignment on a motor vehicle theft indictment filed in the supreme court in any county within such cities and before entry of a plea of guilty or commencement of trial, such supreme court may order that the indictment and action be assigned to a special motor vehicle theft part of the supreme court.

3. The trial of an indictment in a special motor vehicle theft part shall for all purposes be deemed to be a trial in the county in which the indictment was filed, but the administrative board of the judicial conference may promulgate rules, orders or regulations to be applicable to courts in the county where the indictment was filed. The administrative board shall provide by rule, order, or regulation for at least the following matters: the procedure of the part; its auxiliary services; the assignment of judicial personnel; the appointment of terms; and transmittal of all papers in the action, including all undertakings for appearances of the defendant and the witnesses, to the part of the supreme court to which the action has been assigned.

§ 178-b. Special motor vehicle theft parts; prosecutorial organization. The district attorneys of the counties wholly contained in a city having a population of one million or more shall formulate and adopt a plan designed to effect the purposes of this article. The plan shall provide for the following matters:

1. the appointment of an assistant district attorney to the staff of one of the district attorneys to administer the program established pursuant to the plan;

2. the appointment of a staff to operate under the direction and supervision of the assistant district attorney appointed pursuant to subdivision one of this section;

3. the establishment of standards, administrative policies, and procedures to govern the performance of the prosecutorial functions in connection with motor vehicle theft cases, including but not limited to guidelines governing application by the assistant district attorneys appointed pursuant to subdivision one of this section for the impaneling of a grand jury; and

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1 4. any other matters, pertaining to the effective administration of
2 the program and fulfillment of the purposes of this article.

3 § 178-c. Special motor vehicle theft parts; procedure. Notwithstand-
4 ing any other provision of law, a motor vehicle theft indictment
5 returned in any county within such cities may be prosecuted in the
6 special motor vehicle theft part to which it is assigned pursuant to
7 this article, irrespective of the county in which the part is held and
8 in which the crime charged was committed; any assistant district attor-
9 ney appointed pursuant to the plan authorized by this article may prose-
10 cute all offenses cognizable by any special motor vehicle theft part
11 irrespective of the county in which the part is held and in which the
12 crime charged was committed; and upon the application of the assistant
13 district attorney in charge of the special motor vehicle theft parts
14 appointed pursuant to a plan authorized by this article, one or more
15 grand juries may be drawn and impaneled for a special motor vehicle
16 theft part upon the order of the justice assigned to such part, which
17 grand jury may exercise all the powers of a grand jury in the county in
18 which it is impaneled and may in addition exercise its powers with
19 respect to the alleged commission of an offense in any county wholly
20 contained in a city having a population of one million or more involving
21 motor vehicle theft as defined in section 10.00 of the penal law and any
22 other offense that could be properly joined therewith in an indictment.

23 § 178-d. Special motor vehicle theft parts; probation services. The
24 state director of probation and correctional alternatives is authorized
25 to supplement the probation services available to the supreme court in
26 such cities by directing that probation services for cases in the
27 special motor vehicle theft parts be performed by the state division of
28 probation and correctional alternatives. Such services shall be adminis-
29 tered in accordance with the provisions of subdivision two of section
30 two hundred forty-seven of the executive law, except that the two-year
31 limitation contained therein shall not apply.

32 § 23. The penal law is amended by adding a new article 495 to read as
33 follows:

34 ARTICLE 495

35 CRIMINAL FORFEITURE; FELONY MOTOR VEHICLE THEFT

36 Section 495.00 Definitions.

37 495.05 Motor vehicle theft offenses; forfeiture.

38 495.10 Procedure.

39 495.20 Disposal of property.

40 495.25 Election of remedies.

41 495.30 Provisional remedies.

42 495.35 Rebuttable presumption.

43 § 495.00 Definitions.

44 The following definitions are applicable to this article:

45 1. "Offense" means motor vehicle theft as defined in section 10.00 of
46 this chapter, or an attempt or conspiracy to commit any such offense, or
47 solicitation of any such offense.

48 2. "Property" means real property, personal property, money, negoti-
49 able instruments, securities, or anything of value or interest in a
50 thing of value.

51 3. "Proceeds" means any property obtained by a defendant through the
52 commission of an offense, and includes any appreciation in value of such
53 property.

54 4. "Substituted proceeds" means any property obtained by the defendant
55 by the sale or exchange of proceeds of an offense, and any gain realized
56 by such sale or exchange.

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1 5. "Instrumentality of an offense" means any property, other than real
2 property and any buildings, fixtures, appurtenances, and improvements
3 thereon, whose use contributes directly and materially to the commission
4 of an offense.

5 6. "Real property instrumentality of a crime" means an interest in
6 real property the use of which contributes directly and materially to
7 the commission of a specified offense.

8 7. "Specified offense" means a conviction of a person for motor vehi-
9 cle theft as defined by section 10.00 of this chapter, or where the
10 accusatory instrument charges one or more such offenses, conviction upon
11 a plea of guilty to any of the felonies for which plea is authorized by
12 law or a conviction of a person for conspiracy to commit an offense as
13 defined by section 10.00 of this chapter, together with evidence which
14 provides substantial indicia that the defendant used the real property
15 to engage in a continual, ongoing course of conduct involving the unlaw-
16 ful procuring, processing (dismantling), warehousing (storing), selling
17 and possession of stolen motor vehicles and/or stolen motor vehicle
18 parts.

19 § 495.05 Motor vehicle theft offenses; forfeiture.

20 1. When any person is convicted of an offense, the following property
21 is subject to forfeiture pursuant to this article:

22 (a) any property constituting the proceeds and/or the substituted
23 proceeds of such offense, unless the forfeiture is disproportionate to
24 the defendant's gain from or participation in the offense, in which
25 event the trier of fact may direct forfeiture of a portion thereof; and

26 (b) any property constituting an instrumentality of such offense,
27 other than real property instrumentality of a crime, unless such forfei-
28 ture is disproportionate to the defendant's gain from or participation
29 in the offense, in which event the trier of fact may direct forfeiture
30 of a portion thereof.

31 2. When any person is convicted of a specified offense, the real prop-
32 erty instrumentality of such specified offense is subject to forfeiture
33 pursuant to this article, unless such forfeiture is disproportionate to
34 the defendant's gain from or participation in the offense, in which
35 event the trier of fact may direct forfeiture of a portion thereof.

36 3. Property acquired in good faith by an attorney as payment for the
37 reasonable and bona fide fees of legal services or reimbursement of
38 reasonable and bona fide expenses related to the representation of a
39 defendant in connection with a civil or criminal forfeiture proceeding
40 or a related criminal matter, shall be exempt from a judgment of forfei-
41 ture. For purposes of this subdivision, "bona fide" means that the
42 attorney who acquired such property had no reasonable basis to believe
43 that the fee transaction was a fraudulent or sham transaction designed
44 to shield property from forfeiture, hide its existence from governmental
45 investigative agencies, or was conducted for any purpose other than
46 legitimate.

47 § 495.10 Procedure.

48 1. After the grand jury votes to file an indictment charging a person
49 with an offense as that term is defined in section 495.00 of this arti-
50 cle, it may subsequently receive evidence that property is subject to
51 forfeiture under this article. If such evidence is legally sufficient
52 and provides reasonable cause to believe that such property is subject
53 to forfeiture under this article, the grand jury shall file together
54 with the indictment a special forfeiture information specifying the
55 property for which the forfeiture is sought and containing a plain and
56 concise factual statement which sets forth the basis for the forfeiture.

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1 Alternatively, where the defendant has waived indictment and has
2 consented to be prosecuted for an offense by superior court information
3 pursuant to article one hundred ninety-five of the criminal procedure
4 law, the prosecutor may, in addition to the superior court information,
5 file a special forfeiture information specifying the property for which
6 the forfeiture is sought and containing a plain and concise factual
7 statement which sets forth the basis of the forfeiture.

8 2. At any time before entry of a plea of guilty to an indictment or
9 commencement of a trial thereof, the prosecutor may file a superseding
10 special forfeiture information in the same court in accordance with the
11 provisions of subdivision one of this section. Upon the filing of such a
12 superseding forfeiture information the court must, upon application of
13 the defendant, order any adjournment of the proceedings which may, by
14 reason of such superseding forfeiture information, be necessary to
15 accord the defendant adequate opportunity to prepare his or her defense.

16 3. A motion to inspect and reduce the indictment made pursuant to
17 section 210.20 of the criminal procedure law may seek modification of a
18 special forfeiture information dismissing a claim with respect to any
19 property interest therein where the court finds the evidence before the
20 grand jury was legally insufficient to support a claim against such
21 interest.

22 4. The prosecutor shall promptly file a copy of the special forfeiture
23 information, including the terms thereof with the state division of
24 criminal justice services and with the local agency responsible for
25 criminal justice planning. Failure to file such information shall not be
26 grounds for any relief under this chapter.

27 5. In addition to information required to be disclosed pursuant to
28 article two hundred forty of the criminal procedure law, when forfeiture
29 is sought pursuant to this article, and following the defendant's
30 arraignment on the special forfeiture information, the court shall order
31 discovery of any information not otherwise disclosed which is material
32 and reasonably necessary for preparation by the defendant with respect
33 to a forfeiture proceeding brought pursuant to this article. Such mate-
34 rial shall include those portions of the grand jury minutes and such
35 other information which pertain solely to the special forfeiture infor-
36 mation and shall not include information which pertains to the criminal
37 charges. Upon application of the prosecutor, the court may issue a
38 protective order pursuant to section 240.40 of the criminal procedure
39 law with respect to any information required to be disclosed pursuant to
40 this subdivision.

41 6. (a) Trial of forfeiture counts by the jury or by the court.
42 Evidence which relates solely to the issue of forfeiture shall not be
43 presented during the trial on the underlying offense or specified
44 offense, and the defendant shall not be required to present such
45 evidence prior to the verdict on such offense. A defendant who does not
46 present evidence in his defense with respect to the trial of the under-
47 lying offense is not precluded on account thereof from presenting
48 evidence during the trial of the forfeiture count or counts.

49 (b) Trial of forfeiture counts by the jury. After returning a verdict
50 of guilty for the offense or specified offense, or where the defendant
51 has plead guilty to an offense or specified offense and has not waived a
52 jury trial of the forfeiture count or counts pursuant to article three
53 hundred twenty of the criminal procedure law, the jury shall be given
54 the forfeiture information and shall hear any additional evidence which
55 is relevant and legally admissible upon the forfeiture count or counts.
56 After hearing such evidence, the jury shall then deliberate upon the

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1 forfeiture count or counts, and based upon all of the evidence admitted
2 in connection with the indictment or superior court information and the
3 forfeiture information may, if satisfied by proof beyond a reasonable
4 doubt that the property, or a portion thereof, is subject to forfeiture
5 pursuant to this article, return a verdict directing that such property
6 or portion thereof, is subject to forfeiture.

7 (c) Trial of the forfeiture counts by the court. Where a defendant has
8 waived a jury trial of the forfeiture count or counts pursuant to arti-
9 cle three hundred twenty of the criminal procedure law, the court shall
10 hear all evidence upon the forfeiture information and may, if satisfied
11 by proof beyond a reasonable doubt that the property, or a portion ther-
12 eof, is subject to forfeiture under this article, render a verdict
13 determining that such property, or a portion thereof, is subject to
14 forfeiture under this article.

15 (d) After the verdict of forfeiture, the court shall hear arguments
16 and may receive additional evidence upon the motion of the defendant
17 that the verdict of forfeiture (i) is against the weight of evidence, or
18 (ii) is, with respect to a forfeiture pursuant to this article,
19 disproportionate to the defendant's gain from the offense, or the
20 defendant's interest in the property, or the defendant's participation
21 in the conduct upon which the forfeiture is based. Upon such a finding,
22 the court may in the interest of justice set aside, modify, limit or
23 otherwise condition the verdict of forfeiture.

24 7. A final judgment or order of forfeiture issued pursuant to this
25 article shall authorize the prosecutor to seize all property directed to
26 be forfeited under this article upon such terms and conditions as the
27 court deems proper. If a property right is not exercisable or transfera-
28 ble for value by a prosecutor, it shall expire and shall not revert to
29 the convicted person.

30 8. Where the forfeited property consists of real property, the court
31 may at any time prior to a verdict of forfeiture, enter an order pursu-
32 ant to subdivision four-a of section thirteen hundred eleven of the
33 civil practice law and rules.

34 9. No person shall forfeit any right, title or interest in any proper-
35 ty under this article who has not been convicted of an offense or speci-
36 fied offense, as the case may be. Any person claiming an interest in
37 property subject to forfeiture may institute a special proceeding to
38 determine that claim, before or after the trial, pursuant to section
39 thirteen hundred twenty-seven of the civil practice law and rules;
40 provided, however, that if such special proceeding is initiated before
41 trial on the forfeiture count or counts, it may, upon written motion of
42 the prosecutor and in the court's discretion, be postponed by the court
43 until completion of the trial. In addition, any person claiming an
44 interest in property subject to forfeiture may petition for remission as
45 provided for in subdivision seven of section thirteen hundred eleven of
46 the civil practice law and rules.

47 10. Testimony of the defendant or evidence derived therefrom intro-
48 duced in the trial of the forfeiture count may not be used by the prose-
49 cution in any post-trial motion proceedings, appeals, or retrials relat-
50 ing to the defendant's criminal liability for the underlying criminal
51 offense unless the defendant has previously referred to such evidence in
52 such post-trial proceeding, appeal, or retrial relating to the underly-
53 ing offense and the evidence is presented by the prosecutor in response
54 thereto. Upon vacatur or reversal on appeal of a judgment of conviction
55 upon which a verdict of forfeiture is based, any verdict of forfeiture
56 which is based upon such conviction shall also be vacated or reversed.

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1 § 495.20 Disposal of property.

2 All property which is forfeited pursuant to this article shall be
3 disposed of in accordance with the provisions of section ninety-seven-
4 eeee of the state finance law. All reports required to be filed pursuant
5 to article thirteen-A of the civil practice law and rules by a claiming
6 authority shall be filed by the attorney general on behalf of the super-
7 intendent of state police in a forfeiture action brought pursuant to
8 this article.

9 § 495.25 Election of remedies.

10 The imposition of a judgment or order of forfeiture pursuant to this
11 article with respect to a defendant's interest in property shall
12 preclude the imposition of a judgment or order of forfeiture with
13 respect to such interest in property pursuant to the provisions of any
14 other state or local law based upon the same criminal conduct.

15 § 495.30 Provisional remedies.

16 1. The provisional remedies authorized by article thirteen-A of the
17 civil practice law and rules shall be available in an action for crimi-
18 nal forfeiture pursuant to this article to the extent and under the same
19 terms, conditions and limitations as provided in article thirteen-A of
20 such law and rules, except as specifically provided herein.

21 2. Upon the filing of an indictment and special forfeiture informa-
22 tion, or a superior court information and special forfeiture informa-
23 tion, seeking forfeiture pursuant to this article, all further
24 proceedings with respect to provisional remedies shall be heard by the
25 judge or justice in the criminal part to which the criminal action is
26 assigned.

27 3. For purposes of this section, the indictment and special forfeiture
28 information or superior court information and special forfeiture infor-
29 mation seeking criminal forfeiture shall constitute the summons with
30 notice or summons and verified complaint referred to in article thir-
31 teen-A of the civil practice law and rules.

32 § 495.35 Rebuttable presumption.

33 1. In a criminal forfeiture proceeding commenced pursuant to this
34 article, the following rebuttable presumption shall apply: all currency
35 or negotiable instruments payable to the bearer shall be presumed to be
36 the proceeds of a felony offense when such currency or negotiable
37 instruments are (a) found in close proximity to a stolen motor vehicle
38 or the parts thereof or (b) found on the premises or in close proximity
39 to real property which is used to engage in a continual, ongoing course
40 of conduct involving the unlawful procuring, processing, dismantling,
41 warehousing, storing, and selling of stolen motor vehicles and/or stolen
42 motor vehicle parts under circumstances evincing an intent to unlawfully
43 possess, procure, process, or sell a stolen motor vehicle or the parts
44 thereof.

45 2. The presumption established by this section shall be rebutted by
46 credible and reliable evidence which tends to show that such currency or
47 negotiable instruments payable to the bearer is not the proceeds of a
48 felony offense. In an action tried before a jury, the jury shall be so
49 instructed. Any sworn testimony of a defendant offered to rebut the
50 presumption and any other evidence which is obtained as a result of such
51 testimony, shall be inadmissible in any subsequent proceeding relating
52 to the forfeiture action, or in any other civil or criminal action,
53 except in a prosecution for a violation of article two hundred ten of
54 this chapter. In an action tried before a jury, at the commencement of
55 the trial, or at such other time as the court reasonably directs, the

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1 prosecutor shall provide notice to the court and to the defendant of its
2 intent to request that the court charge such presumption.

3 § 24. Subdivision 4-b of section 1310 of the civil practice law and
4 rules is amended by adding a new paragraph (d) to read as follows:

5 (d) a conviction of a person for motor vehicle theft, as defined in
6 section 10.00 of the penal law, or where the accusatory instrument
7 charges such an offense, conviction upon a plea of guilty to any of the
8 offenses for which such plea is otherwise authorized by law, or a
9 conviction of a person for conspiracy where the stolen vehicle or parts
10 thereof are the object of the conspiracy and are located in the real
11 property which is the subject of the forfeiture action, or where the
12 evidence indicates that the defendant used the real property to engage
13 in a continual, ongoing course of conduct involving the unlawful procur-
14 ing, processing, dismantling, warehousing, storing, selling and
15 possession of stolen motor vehicles and/or stolen motor vehicle parts.

16 § 25. The executive law is amended by adding a new section 217-a to
17 read as follows:

18 § 217-a. New York state police information network; access for certain
19 licensees of the department of motor vehicles. The superintendent shall
20 provide limited access to the communication system for the holders of
21 licenses from the department of motor vehicles pursuant to section four
22 hundred fifteen-a of the vehicle and traffic law. Such access shall
23 enable said licensees to conduct a search of vehicle identification
24 numbers to determine if said vehicle or part has been reported stolen or
25 abandoned. The superintendent shall ensure that said licensees are capa-
26 ble of printing a record of each such search. Nothing in this section
27 shall be construed as to allow any licensee access to any other informa-
28 tion maintained by such system.

29 § 26. Section 27-0303 of the environmental conservation law is amended
30 by adding a new subdivision 13 to read as follows:

31 13. "Potentially hazardous wastes" means any motor vehicle part or
32 fluid, including, but not limited to engine lubricating oil, fuel oil,
33 motor oil, gear oil, transmission fluid, hydraulic fluid, dielectric
34 fluid, tires, lead-acid or other automotive battery, freon or other
35 automotive air conditioning refrigerant, or engine coolant fluid, the
36 storage or disposal of which the commissioner, in consultation with the
37 commissioner of the department of motor vehicles, determines may pose a
38 threat to human health or the environment.

39 § 27. Section 27-0303 of the environmental conservation law is amended
40 by adding a new subdivision 14 to read as follows:

41 14. "Automotive waste handler" means any vehicle dismantler, salvage
42 pool, mobile car crusher, itinerant vehicle dismantler, or other busi-
43 ness enterprise licensed in accordance with section four hundred
44 fifteen-a of the vehicle and traffic law.

45 § 28. The environmental conservation law is amended by adding a new
46 section 27-0309 to read as follows:

47 § 27-0309. Storage of potentially hazardous wastes.

48 1. The commissioner shall promulgate such rules and regulations as may
49 be necessary to ensure that automotive waste handlers take such steps as
50 may be necessary to ensure that potentially hazardous wastes are not
51 released into the environment.

52 2. Every automotive waste handler shall keep a record, pursuant to
53 section four hundred fifteen-a of the vehicle and traffic law, of the
54 storage and disposal of any potentially hazardous wastes.

55 3. The possession of any motor vehicle, or identifiable part thereof,
56 by an automotive waste handler shall create a rebuttable presumption

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1 that said handler possessed the entire vehicle, including any potential-
2 ly hazardous wastes. Such presumption shall include responsibility for
3 the abandonment of the vehicle or parts thereof, or the illegal disposal
4 of said vehicles or parts. Such presumption may be rebutted by a certif-
5 ication, on a form designated by the commissioner, signed by the automo-
6 tive waste handler and the seller of the motor vehicle part that the
7 handler purchased only that part. Such certification shall include an
8 acknowledgement that signing a false certification shall subject the
9 individual to the same penalties as if he had been duly sworn.

10 4. The requirements of this section shall not be construed as to
11 relieve any automotive waste handler of responsibility for compliance
12 with any other statute, court decision, or regulation.

13 5. The officers of the division of law enforcement of the department,
14 investigators of the department of motor vehicles, sworn officers of the
15 water supply police employed by the city of New York, and officers and
16 members of the sanitation police of the department of sanitation of the
17 city of New York duly appointed as peace officers by such department,
18 are authorized to enforce the provisions of this section.

19 § 29. The public authorities law is amended by adding a new section
20 553-j to read as follows:

21 § 553-j. Motor vehicle theft prevention. 1. All bridge and tunnel
22 officers, sergeants, and lieutenants of the authority on or after the
23 effective date of this section shall participate in a training course on
24 motor vehicle theft prevention and investigation.

25 2. The authority shall promulgate regulations for the enforcement and
26 implementation of motor vehicle theft prevention programs; including but
27 not limited to the combat auto theft program established pursuant to
28 section two hundred twenty-three of the vehicle and traffic law, the
29 routine check of registrations authorized by section two hundred twen-
30 ty-three-a of the vehicle and traffic law, and the examination of tow
31 trucks authorized by subdivision three of section four hundred twenty-
32 four of the vehicle and traffic law; by its bridge and tunnel officers,
33 sergeants, and lieutenants.

34 3. On or before the first of June of each year, the authority shall
35 report to the temporary president of the senate and the speaker of the
36 assembly on the effectiveness of the implementation of motor vehicle
37 theft prevention programs by its personnel and on its facilities.

38 § 30. This act shall take effect on the first of November next
39 succeeding the date on which it shall have become a law; provided that
40 subdivision 10 of section 855 of the correction law as added by section
41 thirteen of this act shall survive the expiration of any other amend-
42 ments to such section 855, and provided further, however that any rules
43 or regulations necessary to carry out the provisions of this act shall
44 be promulgated before such date; and provided further, however, that
45 section fourteen of this act shall take effect on the same date that
46 section 91 of the state finance law shall be revived pursuant to section
47 13 of part U1 of chapter 62 of the laws of 2003, as amended.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A5542

SPONSOR: McLaughlin

TITLE OF BILL:

An act to amend the penal law, the criminal procedure law, the correction law, the state finance law, the vehicle and traffic law, the judiciary law, the civil practice law and rules, the executive law, the environmental conservation law and the public authorities law, in relation to enacting the comprehensive auto theft prevention act

PURPOSE OR GENERAL IDEA OF BILL:

This legislation will correct the deficiencies in the criminal justice system which have allowed auto theft to proliferate uncontrollably in New York State. This bill seeks to limit plea bargains, alternative sentences, and temporary release programs in auto theft cases; establish a system of criminal forfeiture of "chop shops" to fund auto theft detection, prevention, and prosecution; expand prison capacity; better regulate the disposal of motor vehicles; and implement more effective law enforcement tools to prevent and detect auto theft.

SUMMARY OF SPECIFIC PROVISIONS:

* Establishes a new criminal justice priority for the investigation, prosecution, and incarceration of those responsible for motor vehicle theft and related crimes.

* Requires a mandatory prison sentence for third time motor vehicle theft offenders.

* Mandatory jail terms of one year will be required for guilty pleas entered as a result of plea bargains.

* Alternative sentences will only be permitted when the court finds, on the record, how the overall public interest is served by a sentence other than incarceration.

* Temporary release will be permitted for inmates convicted of auto theft only when one half of the minimum term of imprisonment is completed.

* Creates a system of criminal forfeiture of "chop shops."

* New funding will be provided for auto theft prevention programs, prosecutors, and judges out of the proceeds of criminal forfeiture cases.

* Vehicle dismantlers will be better regulated through a constitutionally acceptable alternative to S415-a of the vehicle and traffic law which was struck down in PEOPLE V. KETA by the Court of Appeals.

* New environmental regulations will be established to ensure that potentially hazardous wastes contained in motor vehicles are properly disposed of.

* The Department of Correctional Services will be authorized to acquire state psychiatric hospitals, scheduled for closing under the Community Reinvestment Act, for use as prisons.

* Regular reports will be required on the availability of local jail cells and options for expanding capacity.

* Checkpoint in high auto theft locations will be authorized so that police officers can conduct routine checks of vehicle registrations.

* Tow trucks which are transporting vehicles will be required to produce proof that the vehicles are legally in their possession.

* Peace officers from the Triborough Bridge and Tunnel Authority would be utilized for the detection of stolen cars transported through TBTA facilities.

JUSTIFICATION:

In 2001, 51,204 were stolen statewide, but only 1,332 inmates were serving time in New York prisons for all grand larceny crimes. Statistics were not available for how many of these crimes were auto theft. Even so, the disparity in the two numbers is obvious.

Professional car thieves are well aware of the fact that they will not be sent to prison. Automobile theft has become a lucrative, risk-free business, almost a crime without punishment. Under provisions of the Penal Law, Grand Larceny/Auto is a class D felony whenever the value of the property exceeds \$3,000. All too frequently, auto theft is downgraded within the criminal justice system in order to clear the court calendars. This means that the case does not go to a grand jury and the victim's testimony may not even be required. Instead, the defense attorney, prosecutor, and court construct a scenario under which the crime is reduced to a misdemeanor and the case is assigned to a lower criminal court. At arraignment, bail may be set at such a small amount that the accused can be set free almost immediately. Plea bargaining often results in an admission of guilt to a lesser offense, and the judge orders the accused to be placed on probation. Imprisonment is limited to "time served" - the number of days the accused is behind bars between the arrest and sentencing. This is hardly a deterrent to a career criminal.

PRIOR LEGISLATIVE HISTORY:

This bill was previously introduced.

FISCAL IMPLICATIONS:

Disbursement of funds that were made available by Chapter 55 of the Laws of 1992 (New York's version of the Michigan Plan) as well as the assets forfeiture funding provisions made available under this bill.

EFFECTIVE DATE:

November 1st next succeeding the date on which it shall have become a law.